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- **Minimum Wage Increase.** Effective January 1, 2018, the New Jersey State minimum wage will increase by 16 cents, or from $8.44 to $8.60. Annual increases in the State's minimum wage are determined by adjustments in the consumer price index pursuant to a constitutional amendment approved by voters in 2013.

- **Employers Urged to Update Anti-Harassment Policies.** In recent months, increasing accusations of sexual assault, abuse and misconduct in the workplace have reinforced the need for employers to have updated anti-harassment, discrimination and retaliation policies, and to step up employee training on these employment policies. The numerous allegations of sexual misconduct leveled against film producer, Harvey Weinstein, which triggered the #MeToo movement on social media, demonstrated how frequently sexual misconduct has occurred and continues to occur across multiple industries and workplaces. The trend in current reporting is how often employees who now feel they have an avenue to complain about such misconduct, previously felt they could not complain because their workplace did not have an effective anti-harassment policy or they feared retaliation in the event of complaint. Employers are encouraged to promptly update their anti-harassment, discrimination and retaliation policies and reinforce such policies through training programs for their employees and management to effectively convey a "zero tolerance" approach to such misconduct in the workplace.

- **Pending Legislation on Non-Compete Agreements.** The New Jersey Senate has proposed legislation to limit certain provisions in, and the enforceability of, restrictive covenants. The new Senate bill requires that any restrictive covenant agreement provided to an employee upon commencement of employment must expressly state that the employee has the right to consult with an attorney prior to signing. The restrictive covenant cannot restrict an employee from engaging in competitive activities beyond 12 months following termination of employment; must limit restricted geographic areas to those in which the employee provided services or had a material presence or influence during the 2 years preceding termination of employment; and cannot restrict the employee from seeking employment in other states. The new bill also mandates that a restrictive covenant cannot restrict an employee from providing a service to a customer or client of the employer if the employee did not initiate or solicit the customer or client; requires the employer to provide written notification of intention to enforce the agreement within 10 days of termination date; and prohibits restrictive covenants against: non-exempt employees, a graduate/undergraduate student on an internship or short-term employment; a seasonal or temporary employee; an employee terminated without good cause or laid off by action of the employer; an independent contractor; an employee under the age of 18; a low-wage employee; or an employee whose period of service to an employer is less than one year. The proposed bill will also require employers to post a copy of the bill or a summary of its requirements in a prominent place in the work area. The bill, if passed, will take effect immediately but shall not apply to any agreement in effect on or before the date of enactment. Employers should be aware of this potential legislation as it may affect restrictive covenant agreements going forward.

- **Changes at the National Labor Relations Board.** The National Labor Relations Board ("NLRB") has recently overruled several of its prior decisions rendered during the Obama Administration. First, in *Hy-Brand Industrial Contractors*, 365 NLRB 156, the NLRB overruled the test used for determining joint employer status previously adopted in *Browning Ferris Industries of California, Inc.*, 362 NLRB No. 186 (2015). Under the *Browning Ferris* standard, the test for determining a joint employment relationship focused primarily upon the degree of managerial control over the employees; not whether the right was actually exercised by management. The Board's decision in *Hy-Brand* marks a return to the NLRB's previous joint employer test and is primarily focused upon whether an alleged joint-employer did in fact exercise control over the alleged employee in a direct and consistent manner. The decision is widely believed to offer a more traditional approach to the test for determining joint employer status. The NLRB issued yet another eagerly anticipated decision on December 15, 2017. In *Raytheon Network Centric Systems*, 365 NLRB No. 161, the NLRB overruled its prior decision in *E.I. DuPont de Nemours*, 364 NLRB No. 113 (2016). Previously, in *E.I DuPont*, the NLRB held that an employer's right to rely upon a binding past practice arising from express language presented in the parties' collective bargaining agreement ended upon expiration of the agreement. In addition, the standard adopted in *E.I. DuPont* required an employer to provide the union with notice of the right to bargain in situations where the employer sought to rely upon express language in the expired collective agreement as a justification for a continued past practice. Under the current *Raytheon* standard, the method in which the past practice arose is immaterial to the NLRB's determination. Rather, a binding past practice constitutes a term and condition of employment, allowing the employer to continue with its prior actions on a unilateral basis and without notice to the union. The key determination under the current test is whether the employer committed a deviation from its past practice. The *Raytheon* decision is being hailed as a return to the common sense approach in determining whether a binding past practice exists between management and its employees.

To discuss any of the above, please contact one of the attorneys listed below:

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